

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**DAVID DEJESUS,**

**Plaintiff**

**v.**

**WARDEN RAPHAEL WILLIAMS, et al.,**

**Defendant(s)**

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**Civ. No: 06-209 JJF**

**JURY TRIAL DEMANDED**

**ANSWER OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC., TO  
PLAINTIFF'S AMENDED COMPLAINT AND ORIGINAL COMPLAINT  
WITH AFFIRMATIVE DEFENSES**

The plaintiff's Amended Complaint, and original Complaint, do not contain numbered paragraphs with distinct allegations, but rather consist of multiple unnumbered paragraphs that contain narrative statements, which do not permit an orderly, concise admission or denial of specific facts or contentions.

Subject to the above, allegations of wrongdoing directed to Answering Defendant, whether words or conduct, whether express or implied, are expressly denied by Answering Defendant, Correctional Medical Services, Inc. It is further denied that plaintiff is entitled to any relief, including, but not limited to, compensatory damages, punitive damages and/or injunctive relief. Furthermore, Answering Defendant, Correctional Medical Services, Inc., denies that it violated plaintiff's civil or constitutional rights, denies any deprivation of adequate medical care and denies any negligence which allegedly proximately caused any injury to the plaintiff.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff was not deprived of any civil or constitutional rights or protection by Answering Defendant, Correctional Medical Services, Inc.

**THIRD AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc. at all times material to plaintiff's Amended Complaint acted in good faith and with the reasonable belief, both objective and subjective, that their actions were lawful and not in violation of the rights of plaintiff under the Constitution and laws of the United States and/or the State of Delaware.

**FOURTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc. at all times material to plaintiff's Amended Complaint was not in violation of plaintiff's rights under the United States Constitution, Delaware Constitution or the laws of the United States or the laws of the State of Delaware.

**FIFTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., was not deliberately indifferent to any of plaintiff's alleged serious medical needs.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims do not rise to the level of deprivation of civil or constitutional rights.

**SEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., did not recklessly, maliciously, willfully, or intentionally commit any wrongful acts or omissions causing injury to the plaintiff and, in the absence of such conduct, there can be no liability on the part of Answering Defendant on the facts of this case.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff received appropriate and competent medical care and treatment during his period of incarceration from Answering Defendant, Correctional Medical Services, Inc.

**NINTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., is entitled to the defense of good faith immunity.

**TENTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc. is otherwise entitled to the defense of immunity and/or qualified immunity.

**ELEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., is not responsible for persons, events, circumstances or conditions reasonably beyond its control.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred or limited by the provisions contained in the United States Civil Rights Act.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to exhaust administrative remedies, including but limited to remedies pursuant to 42 U.S.C. § 1997a(e).

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may otherwise be barred by 28 U.S.C.A § 1915

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred and/or reduced by the plaintiff's own contributory or comparative negligence.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The plaintiff's injuries, if any, resulted from an intervening and/or superseding cause.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitation and/or statutorily mandated administrative time limitation period.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged conditions did not constitute a serious medical need.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to comply with the mandates of 18 Del. C. § 6853.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his alleged injuries and damages.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., had no policy or custom demonstrating deliberate indifference to plaintiff's alleged serious medical need.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., had no personal involvement in any alleged wrong.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

As to any claims sounding in state law, Answering Defendant, Correctional Medical Services, Inc., is immune from liability under the State Tort Claims Act, 10 Del. C. §4001, *et seq.*

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The doctrine of *respondeat superior* or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983 against Answering Defendant, Correctional Medical Services, Inc.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's injuries were caused, in whole or in part, and/or exacerbated by a pre-existing condition which existed prior to the date of any alleged wrongful conduct by Answering Defendant, Correctional Medical Services, Inc.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's own conduct proximately caused and/or exacerbated his injuries, if any.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Insufficiency of process and/or service of process.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Lack of jurisdiction over the person and subject matter.

**TWENTY NINTH AFFIRMATIVE DEFENSE**

No alleged employee of Answering Defendant engaged in any wrongful conduct, violated any federal or state statutes or engaged in any unconstitutional conduct.

WHEREFORE, Defendant, Correctional Medical Services, Inc., hereby requests that all claims against it be dismissed with prejudice, that judgment be entered in favor of Defendant, Correctional Medical Services, Inc., and against Plaintiff, that all fees and costs associated with this action be assessed against plaintiff and in favor of Defendant, Correctional Medical Services, Inc., and that this Court grant Defendant, Correctional Medical Services, Inc., any other relief it deems proper and just.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN AND GOGGIN

BY: /s/ *Eric Scott Thompson*  
KEVIN J. CONNORS, ESQUIRE, (DE ID # 2135)  
ERIC SCOTT THOMPSON, ESQUIRE, (DE ID # 4633)  
1220 N. Market Street, 5<sup>th</sup> Floor  
P.O. Box 130  
Wilmington, DE 19899-0130  
(302) 552-4370  
Attorneys for Defendant, Correctional Medical  
Services, Inc.

DATED: October 22, 2007  
15/542524.v1

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the Answer of Defendant, Correctional Medical Services, Inc., To Plaintiff's Amended Complaint and Original Complaint With Affirmative Defenses, with the Clerk of Court using CM/ECF, which will send notification of such filing to the following:

Erica Yvonne Tross, Esquire  
Department of Justice  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801

I hereby certify that on this date, I have mailed by United States Postal Service, the Answer of Defendant, Correctional Medical Services, Inc., To Plaintiff's Amended Complaint and Original Complaint With Affirmative Defenses, to the following non-registered participant:

David DeJesus, Sr.  
SBI # 209513  
Sussex Correctional Institution (SCI)  
P.O. Box 500  
Georgetown, DE 19947

MARSHALL, DENNEHEY, WARNER,  
COLEMAN AND GOGGIN

BY: /s/ Eric Scott Thompson  
KEVIN J. CONNORS, ESQUIRE, (DE ID # 2135)  
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